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| EXAMINER |
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ALEXANDER, REGINALD

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3742

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/587,296
Filing Date: April 13, 2007
Appellant(s): MAGG ET AL.

Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 20 July 2010 appealing from the Office action mailed 07 April 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

14-31

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

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subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,766,106

ROBERSON

07-2004

2003/0066431 FANZUTTI et al., 04-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 14-16, 18-27 and 29-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Fanzutti et al.

There is disclosed in Fanzutti a coffee machine for preparing coffee using coffee pads, the machine comprising: a continuous flow heater 118 secured in a housing 30 with a pipe 10 for guiding water; a flexible tube connecting piece 136, 138 at each end of the flow heater housing, the connecting piece including receiving elements 132, 134 for integrating additional components (safety valve 146, temperature sensor 124, 128); a securing means 120, 122 for securing the heater in the housing; additional receiving elements 126, 130 for integrating the additional components; wherein the heater includes heating rods 142 and connecting sleeve members 144 for holding the rods together with the pipe; and wherein the connecting pieces include an O-ring (figure 4) for providing a sealing fit with the pipe.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fanzutti et al. in view of Roberson.

Roberson discloses that it is known in the art to use a reed switch as a water level sensing means, the sensor being in combination with a temperature sensor as well.

It would have been obvious to one skilled in the art to provide the coffee machine of Fanzutti with the reed switch taught in Roberson, in order to monitor the water level of the coffee machine.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fanzutti et al.

Fanzutti, as discussed above, discloses the claimed invention except for the use of two axially spaced O-rings.

It would have been obvious to one skilled in the art to provide an additional O-ring, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

(10) Response to Argument

Rejection of claims 14-16, 18-27 and 29-31 102(e) over Fanzutti et al.

Claims 14, 15, 18, 21, 25

Appellant argues that the top end cap 138 of Fanzutti, which is indicated in the rejection to represent a flexible tube connecting piece, does not have elements for integrating additional components. And, at most, the top end cap 138 has a single receiving element for integrating a single component.

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It should be noted that while Appellant appears to be interpreting the claim language to define only one flexible tube connecting piece at just one end of the continuous flow heater, the claim language leaves open an additional interpretation. Claim 14 states "...has a flexible tube connecting piece at one end...". This broad description fails to define which end of the heater the connecting piece is located or single out that end as the only end having a connecting piece. The continuous flow heater or Fanzutti has at least two ends and has connecting piece 138 at one end and connecting piece 136 at one end. Thus, the claim language is met by the Fanzutti arrangement. From this point it should be noted that at least additional component (safety valve) 146 is associated with connecting piece 138, at least additional component (pump) 54 is associated with connecting piece 138 and 136.

It should also be noted that Appellants use of the term "additional component" fails to define any specific element is can be met by any element connected or associated with connecting pieces 136 or 138.

Claims 19 and 30

Appellant argues that there is no teaching in Fanzutti that the shield members 120, 122 secure anything to a housing.

It should first be noted that the claim language at claim 19 requires a securing means for securing the continuous flow heater "in" the housing and not to the housing. This observation should be made since no specifics of the securing means are brought forth in the claim and the shield members 120, 122 (as seen In figure 2) form a support housing for the heater that appears to be supported within the housing.

Thus, the shield members serve an equivalent function of the claimed “securing means”.

Claims 20 and 31

Appellant argues that the securing means (shield members 120, 122) of Fanzutti do not have any additional elements for integrating additional components. And, that the clips 126, 130 are not included in shield members 120, 122.

Again, turning to the broad claim language, claim 20 recites “...the securing means includes additional receiving elements...”. There is no recitation of how the additional receiving elements are received by the securing means or even if they are attached thereto. Thus, the clips 126, 130, which are enclosed by the shield members are considered to be included with the securing means (shield members). And, without any further structural description, the elements 124, 128 met the requirements of “additional components”.

Claims 22-24 and 16

Appellant argues that Fanzutti fails to show a heating rod thermally connected to the pipe of the continuous flow heater by means of at least one flat contact surface.

Looking at claim 22, at no point does the claim require the flat contact surface to be on the pipe or heating rod. Nor does the claim require that the flat contact surface be between the pipe and heating rod. The claim only requires a flat contact surface be involved with the thermal connection between the pipe and heating rod.

The shield members 120, 122 have flat surfaces which are in contact with the pipe and heating rods surrounding both and forming a connection.

Claims 26 and 29

Appellant argues that the end caps 136, 138 of Fanzutti do not abut against an inner wall of tube 140, and that nothing appears to be abutting an inner wall of tube 140.

A view of figure 4, in Fanzutti, shows end caps 134, 132 having tapered ends. The tapered ends are what abut against an inner wall of tube 140 creating a seal. This arrangement is old and well known in the plumbing art.

In regards to claim 29 and the substantially conical shape of the connecting piece, the end caps 132, 134, which are a part of the connecting piece, are considered to be substantially conical since they have the tapered ends.

Rejection of claim 17 103(a) over Fanzutti in view of Roberson

Appellant argues that Roberson does not remedy the deficiencies of Fanzutti.

Fanzutti is cited for its disclosure of a water level sensor in the form of a reed switch. Such an arrangement is shown to be old and well known in the art.

Rejection of claim 18 103(a) over Fanzutti

Appellant argues that it would make no sense to put O-rings on end caps 136, 138 since they are not connected to tube 140.

It was stated above that end caps 132, 134 are part of end caps 136, 138 when placed together to form connecting pieces.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Reginald L. Alexander

/Reginald L. Alexander/

Conferees:

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